

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
Plaintiff

v.

JOSHUA OYOLA-RIVERA
Defendant

Criminal No. 17-598(CCC)

SENTENCING MEMORANDUM

*'Tonight, about 40 percent of children in the western world will go to sleep in homes in which their fathers do not live. Before they reach the age of eighteen, more than half of our nation's children are likely to spend at least a significant portion of their childhoods living apart from their fathers. Never before in this country have so many children been voluntarily abandoned by their fathers. Never before have so many children grown up without knowing what it means to have a father. Fatherlessness is the most harmful demographic trend of this generation. It is the leading cause of declining child and adult well being in our society. It is also the engine driving our most urgent social problems.... If this trend continues, fatherlessness is likely to change the shape of our society.'*¹

From the time he was a baby up to age 15, Joshua Oyola resided in at least five (5) foster homes in *Vega Baja, Naranjito, Carolina, Comerio* and *Levitown*. Local authorities removed him and his siblings from the care of their mother when he was about four(4) years old. Joshua never met his father. He grew up without a father, he was raised by strangers. Whenever he was sent to a different foster house, he had to change schools and again leave everything familiar to him behind. When he was old enough and realized he was just a town away from his mother' home at a Public Housing Project in *Bayamon*, he ran to live with her. Since the system could not find a suitable foster home, the Department of Family Affairs decided to let him stay with his mother. It had been more than ten (10) years since he lived under the same roof with his biological mother

¹ From The 9 Devastating Effects of the Absent Father, comments by David Blankenhorn. Mr. Blankenhorn is a Harvard graduate in Social Sciences, founder and president of the Institute for American Values, co-director of The Marriage Opportunity Council, and the author of Fatherless America and The Future of Marriage.

Although Joshua had eight brothers and sister, for the most part he grew up separated from them. At one foster home he was allowed to stay with two of his brothers. Of all his siblings, Joshua was closest to Misael. But even this attachment was destroyed by tragedy as Misael died when they were kids. Joshua only remembers having a strong bond with his first foster parent, Ana. He was more than she could handle, so she gave him up. Eventually, she died. On one occasion, while in transit between foster homes, Joshua was housed at a juvenile complex of *Hogares Crea*. He had never been arrested nor charged with juvenile delinquency. But still, there he was, confined to this institution until they could find another home for him.

Now at 34 years old, Joshua finds meaning and purpose in his own children, Brydon Daniel and Elian Abisael. His children have always lived with him and his wife. Never before his federal arrest had not kissed his children goodnight.

Joshua Oyola is not a role model. By society standards, he is a convicted felon. But his journey shows resilience. Resilience despite his disadvantaged childhood, his traumatic experiences, and the lack of emotional attachment until he met his wife Von Marie. Resilience despite getting arrested and charged at age 19. For many years-more than a decade- Mr. Oyola was a law abiding citizen. He is now behind bars. But he wants his children to story different to his. He wants them, to grow up with a father who cares and loves them. His upbringing and current family circumstances mitigate his conduct and the punishment that he deserves.

Joshua's story is one of a poor, neglected, fatherless child who end up in our criminal justice system. His disadvantaged childhood and upbringing mitigate his conduct and the punishment he deserves.

“His mother initially raised the defendant, until age 4. He never met his father and his mother never talk about him. The Puerto Rico Department of Family removed the defendant and his siblings from their mother’s home when he was approximately 4 years old. He indicated that he does not know the reason why this happened. After being removed from his mother’s care, he was placed at a foster home in Vega Baja, PR, with Ms. Ana Maria Robles-Rivera, deceased. He saw her as a second mother. He also lived in different foster homes; at Naranjito, PR; Carolina, PR; Comerio, PR; and Levittown, PR. When he was in the foster home in Comerio, his brothers Misael and José, also lived there. However, he did not like living there and as such, he misbehaved; he was later removed from that home. He reported that at age 13, he was placed at “Hogar Crea para jovenes” Comerio, PR, but later was once again placed with Ms. Robles-Rivera. When he was 15 years old, he lived at a foster home, in Levittown, PR. Mr. Oyola indicated that he escaped

from this home and went living with his mother. His mother returned him to the Puerto Rico Department of Family. After a week, they were not able to find a foster home for him, and they placed him with his mother at José Celso Barbosa PHP, Bayamón, PR.”²

Mr. Oyola ran away from the last foster home at age 15. As a child, he loved playing basketball and baseball. He liked Math class. But growing up he was never able to stick to one program, to one school, to develop a stable educational plan as he was constantly moved from foster homes. He did not have a father to console him, to stand up for him, to be responsible for him, to take care of him. He grew up fatherless.

The summary of issues listed below, in no way covers every aspect of **father absence**.³ However it is still a powerful indictment to the current social epidemic. In reference to the general population, individuals raised in a father absent environment demonstrate:

1. Five times the average suicide rate
2. Dramatically increased rates of depression and anxiety
3. 32 times the average rate of incarceration
4. Decreased education levels and increased drop-out rates
5. Consistently lower average income levels
6. Lower job security
7. Increased rates of divorce and relationship issues
8. Substantially increased rates of substance abuse; and
9. Increases in social and mental behavioral issues.⁴

National Fatherhood Initiative (NFI) was founded 20 years ago because some very smart people realized that the most consequential social trend of our time is widespread father absence

² PSR at page 10, paragraph 48.

³ Father absence is a term used by researchers to indicate that a child has lived for part or all of their childhood without their biological father. This will be because the child's parents have split up or because they never lived together in the first place. The Father Absence Theory has its genesis back in the 1960s when people became concerned that people (mostly men) would develop differently if they grew up without a father in the house. This concern partly originated with the long term absences of soldiers fighting in the Second World War.

⁴ <https://thefathercode.com/the-9-devastating-effects-of-the-absent-father>

in the lives of our nation's children.⁵ They realized that growing up in a home without a dad increased the risk that a child would experience a host of poor outcomes in their immediate and distant futures. These outcomes include increased risk of living in poverty, performing poorly in school, emotional and behavioral problems, becoming violent, getting pregnant (or getting someone pregnant) as a teen, winding up in prison or jail, and committing suicide.

Mr. Oyola's history and characteristics reflect the absence of a father in his childhood. But he wants to stop this cycle. He does not want his children to grow up fatherless.

Our system punishes the immediate family of a criminal not by exile but by impoverishment, and by humiliation and the denial of a parent's or spouse comfort and company. Mr. Oyola's family ties and responsibilities mitigate his punishment.

In the government's zeal to make offenders pay by forfeiting their freedom, children become the secondary victims of crime, experiencing residential disruptions, school changes, separation from siblings, foster care, or periods of time spent with convenient but inappropriate caretakers. They feel shame, isolation, abandonment, confusion, grief, and loneliness. Well-meaning family members encourage keeping the secret from friends and teachers, adding to the sense of stigma, and isolating them from potential support. For too many of these youngsters, the stage is set for a troubled adolescence.

Many of the men and women currently incarcerated are parents of children under the age of 18. It is estimated that 1.7 million children have a father in prison. Approximately ten million, or one in eight children, have experienced parental incarceration at some point of their lives. The link between generations is so strong, that half of all juveniles in custody had a father, mother, or other close relative who has been in jail or prison.

The trauma experienced by children who have a parent taken from them is extraordinary. For the child and other family members, the set of emotions experienced when a loved one is incarcerated are often compared to the loss of a family member through death. This metaphor does

⁵ http://www.huffingtonpost.com/christopher-a-brown/the-proof-is-infather-abs_b_4941353.html

not take into consideration how shame and humiliation about prison life affect the child along with economic and other calamities. Children change during a parent's incarceration. They are older and at different stages of development. Children can exhibit troublesome behavior after the parent leaves. There are children who can even wait until the incarcerated parent is released to really express their rage. Others will not deal with their feelings until years after the parent's release. The custodial parent also changes. In a two-parent family, he/she has to become both mother and father, and has to bear all responsibilities previously shared by both parents. Incarceration also changes the convicted parent. In prison, he will suffer a loss of identity and respect, and he will make few decisions. The environment he will live at will be filled with anger and hostility.

In the last decade, the social sciences have begun recognizing and examining the crucial role that fathers play in child development and family dynamics.⁶ A noted sociologist, Dr. David Popenoe, is one of the pioneers of the relatively young field of research into fathers and fatherhood. "Fathers are far more than just 'second adults' in the home," he says. "Involved fathers bring positive benefits to their children that no other person is as likely to bring."⁷ Fathers have a direct impact on the well-being of their children. Children with involved, caring fathers have better educational outcomes. A number of studies suggest that fathers who are involved, nurturing, and playful with their infants have children with higher IQs, as well as better linguistic and cognitive capacities.⁸ Toddlers with involved fathers go on to start school with higher levels of academic readiness. They are more patient and can handle the stresses and frustrations associated with schooling more readily than children with less involved fathers. A 2001 U.S. Department of

⁶

Rosenber, J. & Wilcox, W.B. (2006). *The Importance of Fathers in the Healthy Development of Children*. U.S. Department of Health and Human Services; Child Abuse and Neglect, User's Manual. <https://www.childwelfare.gov/pubs/usermanuals/fatherhood>

⁷

Popenoe, D. (1996). *Life without father: Compelling new evidence that fatherhood and marriage are indispensable for the good of children and society* (p. 163). New York, NY: The Free Press; Stanton, G. T. (2003). *How fathers, as male parents, matter for healthy child development* [Online]. Available: <http://www.family.org/cforum/fosi/marriage/fatherhood/a0026230.cfm>.

⁸

Pruett, K. (2000). Father-need. New York, NY: Broadway Books; Sternberg, K. J. (1997).

Education study found that highly involved biological fathers had children who were 43 percent more likely than other children to earn mostly As and 33 percent less likely than other children to repeat a grade.⁹ Even from birth, children who have an involved father are more likely to be

emotionally secure, be confident to explore their surroundings, and, as they grow older, have better social connections with peers. These children also are less likely to get in trouble at home, school, or in the neighborhood.¹⁰



Figure 1 This is his beautiful baby boy Elian Abisael.

Mr. Oyola knows first hand what it feels to grow up without a father. He does not want his children to suffer his absence. His current incarceration has made him value them even more. As he stated during his PSR interview, his family is the most valuable thing.

⁹ Nord, C., & West, J. (2001).

¹⁰ Yeung, W. J., Duncan, G. J., & Hill, M. S. (2000). Putting fathers back in the picture: Parental activities and children's adult outcomes. In H. E. Peters, G. W. Peterson, S. K. Steinmetz, & R. D. Day (Eds.), *Fatherhood: Research, interventions and policies* (pp. 97–113). New York, NY: Hayworth Press; Harris, K. M., & Marmer, J. K. (1996). Poverty, paternal involvement, and adolescent well-being. *Journal of Family Issues*, 17(5), 614–640; Pleck, J. H. (1997). Paternal involvement: Levels, sources, and consequences. In M. E. Lamb (Ed.), *The Role of Fathers in Child Development* (3rd ed., pp. 66–103). New York, NY: John Wiley & Sons.

The presence of a father during critical neurodevelopmental periods is very important. Father absence induces impairments in social behavior that persist to adulthood. Adolescents from single-parent families have been found to engage in greater and earlier sexual activity. Some fathering advocates would say that almost every social ill faced by America's children is related to fatherlessness.



Figure 2 Mr. Oyola loves his oldest son Brydon Daniel.

The U.S. Department of Health and Human Services states: "Fatherless children are at a dramatically greater risk of drug and alcohol abuse."¹¹ Adolescents living in intact families are less likely to engage in delinquency than their peers living in non-intact families. Compared to peers in intact families, adolescents in single-parent families and stepfamilies were more likely to engage in delinquency. This relationship appeared to be operating through differences in family processes—parental involvement, supervision, monitoring, and parent-child closeness—between

¹¹ U.S. Department of Health and Human Services, National Center for Health Statistics, Survey on Child Health, Washington DC 1993.

intact and non-intact families.¹²

According to the National Principal Association Report, 71% of all high school dropouts come from fatherless homes- 9 times the average. A 2002 Department of Justice survey of 7,000 inmates revealed that 39% of jail inmates lived in mother-only households.

Mr. Oyola's family circumstances suggest a low risk of recidivism.

“[T]he single best predictor of successful release from prison is whether the former inmate has a family relationship to which he can return. Studies have shown that prisoners who maintain family ties during imprisonment are less likely to violate parole or commit future crimes after their release than prisoners without such ties.” *See Solangel Maldonado, Recidivism and Parental Engagement, 40 Fam. L.Q. 191, 196-197 (2006).*

Ms. Von Marie Pagan, Joshua’s common-law wife, described him as an excellent father and consensual partner.

Mr. Oyola had never been separated from his wife and kids since they were born. His family ties suggest a low risk of recidivism.



¹² Stephen Demuth and Susan L. Brown, “Family Structure, Family Processes, and Adolescent Delinquency: The Significance of Parental Absence Versus Parental Gender,” *Journal of Research in Crime and Delinquency* 41, No. 1 (February 2004): 58-81. <http://familyfacts.org/briefs/26/marriage-and-family-as-deterrants-from-delinquency-violence-and-crime>.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record.

In San Juan, Puerto Rico, this 4th day of September 2018.

ERIC A. VOS
FEDERAL PUBLIC DEFENDER

S/JOANNIE PLAZA-MARTINEZ
Assistant Federal Public Defender
USDC-PR 215604
241 F. D. Roosevelt Avenue
San Juan, PR 00918-2305
Phone No. (787) 281-4922
Fax No. (787) 281-4899
E-mail: Joannie_Plaza@fd.org

